

Message Text

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ACTION FAA-00

INFO OCT-01 AF-06 EUR-12 ISO-00 DOTE-00 L-03 EB-07 CIAE-00

INR-07 NSAE-00 /036 W

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R 181508Z JUL 75

FM AMEMBASSY LAGOS

TO SECSTATE WASHDC 258

INFO AMEMBASSY BRUSSELS

LIMITED OFFICIAL USE SECTION 1 OF 2 LAGOS 6867

DEPT PASS FAA

BRUSSELS FOR FAA REP

E.O. 11652: N/A

TAGS: EAIR, NI, US

SUBJECT: FAA AGREEMENT WITH NIGERIAN MINISTRY OF TRANSPORT

REF: (A) LAGOS 5156; (B) LAGOS 3542

1. AT OUR REQUEST WE MET WITH MINISTRY OF TRANSPORT JULY 17 TO ASCERTAIN STATUS OF FAA DRAFT MEMORANDUM OF AGREEMENT DATED APRIL 29, 1975. MOT LEGAL ADVISOR, AJALA, SAID THAT HE IS IN PROCESS OF PREPARING NEW MOT DRAFT OF MEMORANDUM THAT MOT WANTS TO SEND TO FAA BY MID-AUGUST. HE HOPED NEW MOT DRAFT WOULD BE ACCEPTABLE TO FAA, AND IF SO ONLY STEP REMAINING FOR MOT WOULD BE SUBMISSION OF AGREED DRAFT TO FEDERAL EXECUTIVE COUNCIL. IF FAA HAD PROBLEMS WITH NEW DRAFT, AJALA SUGGESTED WOULD BE DESIRABLE FOR MOT AND FAA REPRESENTATIVES TO MEET AGAIN IN LAGOS OR WASHINGTON TO RESOLVE PROBLEMS.

2. AJALA ADDED THAT FMG VERY MUCH WANTS TO MOVE ON AGREEMENT AND HE SAW NO RPT NO REASON WHY CREATION OF NEW MINISTRY OF CIVIL AVIATION OR CHANGE IN PERMANENT SECRETRIES THAT WAS ANNOUNCED THIS MONTH SHOULD AFFECT FMG POSITION. IT WAS NOW MORE IMPORTANT THAN EARLIER TO GET AGREEMENT CONCLUDED AND FAA EXERCISE UNDER LIMITED OFFICIAL USE

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WAY SO THAT IT WOULD COINCIDE WITH ESTABLISHMENT OF NEW MINISTRY.

3. WE MADE POINT TO AJALA THAT WE WERE NOT AUTHORIZED TO NEGOTIATE FOR FAA BUT IN ORDER TO ASSIST FAA'S UNDERSTANDING OF NEW MOT DRAFT WOULD BE HELPFUL FOR US TO HAVE INDICATION OF KINDS OF PROBLEMS MOT HAD HAD WITH FAA DRAFT OF APRIL 29, AND NOTICE OF ANY NEW PROPOSALS THAT MIGHT BE FOUND IN UPCOMING MOT DRAFT. AJALA SAID NEW MOT DRAFT WOULD BE SUBJECT UPPER LEVEL REVIEW BEFORE TRANSMITTAL TO FAA, BUT HE DID NOT EXPECT SIGNIFICANT CHANGES FROM CONSENSUS ALREADY REACHED IN MOT, AND THAT CONSENSUS WAS INFAVOR DRAFT THAT WOULD CLOSELY RESEMBLE EARLIER DRAFT THAT MOT HAD USED IN FEBRUARY DISCUSSIONS IN LAGOS WITH FAA REPRESENTATIVES HOWERTON AND LUECKER. AJALA ANTICIPATED NO RPT NO SIGNIFICANT NEW PROPOSALS.

4. IN EXPLANATION MOT PROBLEMS WITH FAA FRAFT AND REASONS FOR PREFERRING ITS OWN EARLIER AND UPCOMING DRAFTS, AJALA OFFERED THESE COMMENTS ON FAA FRAFT OF APRIL 29 (REFERENCES TO MOT DRAFT IN FOLLOWING SUB PARAS. ARE TO ITS FEBRUARY DRAFT.)

A. ARTICLE II-B ON OBLIGATIONS FAA. AJALA SAID MOT UNHAPPY AT FAA SUBSTITUTION "SHALL EXERCISE DILIGENCE" AND WOULD PREFER "SHALL ENSURE" AS CONTAINED MOT DRAFT.

B. ARTICLE IV-B-2 ON STATUS FAA PERSONNEL. IT WAS NOT CLEAR TO MOT WHAT FAA WAS SEEKING TO OBTAIN FOR ITS PERSONNEL BY STIPULATING "FIGHTS, PROTECTION AND ADVANTAGES SIMILARLY ACCORDED TO EMPLOYEES OF OTHER U.S. GOVERNMENT AGENCIES" WITH RESPECT TO FISCAL MATTERS AND CUSTOMS PRIVILEGES. SO FAR AS MOT AWARE, EMPLOYEES OF USG AGENCIES INCLUDING DEPARTMENT OF STATE, UNLESS ACCREDITED TO FMG IN DIPLOMATIC STATUS, ENJOYED ONLY FIRST ARRIVAL IMPORT PRIVILEGES AS SET FORTH IN ARTICLE IV-B-2 OF MOT'S FEBRUARY DRAFT, AND MOT PREFERRED THAT LANGUAGE ON GROUNDS OF CLARITY AND PRECISION. HOWEVER, IT WOULD AGREE TO DELETION SECOND SENTENCE IN MOT DRAFT OF THAT ARTICLE BEGINNING WITH WORDS "PROVIDED THAT" AND ENDING WITH WORDS "OBTAINABLE IN NIGERIA." MOT WOULD ALSO LIKE TO RESTOR IN THIRD SENTENCE THAT ARTICLE ITS EARLIER WORDING OF "ANY IMPORTED ARTICLES" IN PLACE OF FAA WORDING "ANY MOTOR VEHICLE." AT MINISTRY OF JUSTICE REQUEST MOT WOULD ALSO BE PROPOSING THAT FIRST ARRIVAL IMPORT PRIVILEGE BE LIMITED TO PERIOD OF 3 MONTHS AFTER ARRIVAL.

EMBASSY COMMENT: WE WOULD LIKE TO SUPPORT FAA DRAFT ARTICLE IF-B-2 BUT WE SEE NO RPT NO REAL HOPE OF MAKING OUT CASE THAT LIMITED OFFICIAL USE

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FMG WOULD ACCEPT. AS AJALA POINTS OUT, STATE AND OTHER USG AGENCY EMPLOYEES IN NIGERIA, UNLESS ACCREDITED IN DIPLOMATIC STATUS, ENJOY ONLY THOSE FIRST ARRIVAL IMPORT PRILILEGES SET FORTH IN MOT DRAFT, AND MINISTRY OF EXTERNAL AFFAIRS WOULD CERTAINLY SUPPORT MOT OBJECTION TO GRANTING FAA TEAM IMPORT PRIVILEGES GOING BEYOND THOSE ALLOWED TO OTHER USG AGENCIES.

C. ARTICLE V-A ON FAA PERSONNEL COMPLEMENT. ACCORDING JAALA, MOT CONCERNED AT FAA INSERTION OF WORD "TMEPORARY" SO THAT

ARTICLE READS FAA GROUP SHALL UNDERTAKE "TEMPORARY DUTY TOURS TO SOME OTHER PARTS OF NIGERIA." MOT HAS NO INTENTION OF STATIONING MEMBERS OF FAA TEAM OUTSIDE OF LAGOS, BUT DOES WANT ASSURANCE THAT FAA TEAM MEMBERS WILL BE WILLING TO ACCEPT ASSIGNMENTS OUTSIDE OF LAGOS AND STAY LONG ENOUGH TO COMPLETE THOSE ASSIGNMENTS. AJALA THOUGHT PROBLEM COULD BE RESOLVED BY INTRODUCING LANGUAGE SAYING THAT ASSIGNMENTS WOULD BE IN KEEPING WITH ESTABLISHED PRACTICES MOT FOLLOWS WITH ITS OWN PERSONNEL; OR ELSE BY STIPULATING LIMIT TO ASSIGNMENT, FOR EXAMPLE, 6 MONTHS.

D. ARTICLE V-C-1 ON PRELIMINARY PHASE. AJALA SAID MOT DID NOT UNDERSTAND FAA'S REASONS FOR SUBSTITUTING "THE INITIAL COMPLEMENT OF THE CAAG" FOR EARLIER MOT WORDING "A WORKING GROUP."

E. ARTICLE VI ON LIABILITY. MOT DID NOT UNDERSTAND FAA'S REASONS FOR DELETING WORDS " WHERE POSSIBLE" FROM CLAUSE IN MOT DRAFT THAT READ FMG "SHALL, ALSO AT TIS OWN EXPENSE AND WHERE POSSIBLE, SATISFY ANY COURT JUDGEMENT." AJALA SAID MOT, OR FMG WOULD GO AS FAR AS IT COULD TO SATISFY COURT JUDGEMENTS AGAINST FAA OR ITS REPRESENTATIVES, BUT THERE MIGHT BE JUDGEMENTS THAT WOULD BE IMPOSSIBLE FOR FMG TO SATISFY. FOR EXAMPLE, FMG COULD NOT PROVIDE A SUBSTITUTE TO SERVE PRISON SENTENCE IF THAT WAS COURT JUDGMENT AND MOT PHRASE "WHERE POSSIBLE" WAS INTENDED TO TAKE

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ACTION FAA-00

INFO OCT-01 AF-06 EUR-12 ISO-00 DOTE-00 EB-07 L-03 CIAE-00

INR-07 NSAE-00 /036 W

----- 116000

R 181508Z JUL 75

FM AMEMBASSY LAGOS

TO SECSTATE WASHDC 259

INFO AMEMBASSY BRUSSELS

LIMITED OFFICIAL USE SECTION 2 OF 2 LAGOS 6867

DEPT PASS FAA

BRUSSELS FOR FAA REP

E.O. 11652: N/A

TAGS: EAIR, NI, US

SUBJECT: FAA AGREEMENT WITH NIGERIAN MINISTRY OF TRANSPORT

REF: (A) LAGOS 5156; (B) LAGOS 3542

1. AT OUR REQUEST WE MET WITH MINISTRY OF TRANSPORT JULY 17 TO ACCOUNT OF CONTINGENCIES OF THAT KIND. AJALA ADDED THAT ACCOUNT OF CONTINGENCIES OF THAT KIND. AJALA ADDED THAT MOT COULD ACCEPT FAA ADDITION TO THIS ARTICLE STIPULATING THAT NOTWITHSTANDING FMG UNDERTAKING TO PROCURE FOR FAA OR ITS EMPLOYEES LEGAL REPRESENTATION OF FMG'S CHOICE, FAA OR ITS EMPLOYEES WOULD NOT BE PRECLUDED FROM RETAINING OWN LEGAL REPRESENTATIVES. HOWEVER, MOT WOULD LIKE TO SUPPLEMENT FAA'S ADDITION WITH LANGUAGE SETTING FORTH THAT IF FAA OR ITS EMPLOYEE RETAINED OWN LEGAL COUNSEL IN ADDITION TO COUNSEL PROVIDED BY FMG, THEN FAA COUNSEL WOULD ACT AS JUNIOR TO FMG COUNSEL, OR ELSE FMG WOULD BE FREE TO WITHDRAW ITS COUNSEL. AJALA PUT IT THAT MOT WISHED TO AVOID SITUATION IN WHICH COUNSEL PROVIDED BY FMG AND THAT RETAINED BY FAA ON ITS OWN MIGHT BE AT OPEN AND ACRIMONIOUS LOGGERHEADS OVER CONDUCT OF CASE. MINISTRY OF JUSTICE HAD ASKED THAT MOT ALSO INTRODUCE INTO THIS ARTICLE SET OFF PARAGRAPH PROVIDING THAT LIMITED OFFICIAL USE

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INSURANCE OR OTHER REIMBURSEMENT THAT MIGHT ACCRUE TO FAA OR ITS EMPLOYEES IN RESPECT OF JUDGMENT FOR WHICH FMG HAD ACCEPTED RESPONSIBILITY WOULD BE TRANSFERRED TO FMG; AND PARAGRAPH STIPULATING THAT FAA WOULD MAKE AVAILABLE TO FMG FILES AND WITNESSES THAT FMG MIGHT REQUIRE IN ORDER TO DEFEND ACTIONS AGAINST FAA OR ITS EMPLOYEES.

F. ARTICLE VII ON SUPPORT. AJALA SAID MOT COULD ACCEPT PROVISION THAT FAA INTRODUCED AS PARAGRAPH E, TO EFFECT THAT IF FMG UNABLE TO PROVIDE OFFICE SPACE, CLERICAL AND ADMINISTRATIVE SUPPORT AND TRANSPORT STIPULATED IN PARAS. A THROUGH D OF SAME ARTICLE, FAA WOULD BE AUTHORIZED TO PROCURE THESE SERVICES ITSELF AND CHARGE COSTS TO FMG. HOWEVER, MOT WOULD WISH TO ADD TO NEW PARAGRAPH E INTRODUCED BY FAA PROVISION TO EFFECT THAT FAA PROCUREMENT THOSE SERVICES SHOULD BE CONDITIONED ON AUTHORIZATION IN WRITING FROM MOT AND THAT FAA WOULD GIVE ACCOUNTING FOR ITS PROCUREMENT WITHIN SPECIFIED TIME LIMIT.

G. ARTICLE VIII, G AND H ON FINANCIAL PROVISIONS. AJALA SAID THAT MOT RECORDS OF FEBRUARY DISCUSSIONS WITH FAA REPRESENTATIVES SHOWED THAT PARAGRAPHS G AND H HAD BEEN DELETED FROM THIS ARTICLE, BUT IN FAA DRAFT ONLY PARAGRAPH H HAD BEEN DELETED. MOT WOULD BE GLAD TO DISCUSS MERITS OF KEEPING OR DELETING PARA. G.

H. ARTICLE X ON SETTLEMENT OF DISPUTES. THIS ARTICLE WAS IN MOT FEBRUARY DRAFT BUT DELETED IN FAA DRAFT. AJALA OBSERVED THAT WITH BEST WILL IN WORLD DISPUTES SOMETIMES AROSE IN CARRYING

OUT AGREEMENTS, AND FMG ATTACHED IMPORTANCE TO HAVING ARTICLE IN AGREEMENT THAT WOULD SET FORTH PROCEDURES FOR SETTling DISPUTES. MOT WOULD BE GLAD TO CONSIDER ALTERNATIVE LANGUAGE FROM FAA, BUT WOULD NOT WISH TO AGREE TO DELETION OF THIS ARTICLE.

I. ARTICLE XII ON COMMENCEMENT DATE. (IN FEBRUARY MOT DRAFT THIS APPEARS AS ARTICLE XIII) AJALA SAID MOT COULD NOT UNDERSTAND THAT ARTICLE XII IN FAA DRAFT PROVIDED FOR AGREEMENT REMAINING IN FORCE FOR PERIOD 4 AND ONE HALF YEARS, RATHER THAN 4 YEARS STIPULATED IN EARLIER MOT DRAFT, AND ON WHICH HE UNDERSTOOD FAA HAD AGREED WITH MOT. HE SUGGESTED APPARENT DIFFERENCE PERHAPS ONE OF SEMANTICS ARISING OUT OF FAA'S INTRODUCTION OF CONCEPT OF MOBILIZATION PERIOD. HOWEVER HE WAS OBLIGED TO EMPHASIZE THAT MOT'S INTENTION WAS TO CONTRACT FOR AND PAY FAA LIMITED OFFICIAL USE

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FOR OPERATIONAL PRESENCE IN NIGERIA OF 4 YEARS ONLY. AT MINISTRY OF JUSTICE REQUEST, MOT WOULD ALSO BE ASKING FAA TO REVERT TO PROVISION OF 90 DAYS' NOTICE BY EITHER PARTY FOR TERMINATION OF AGREEMENT.

5. IF FAA WISHES US TO SEEK FURTHER CLARIFICATION AJALA'S POINTS OR TO PUT TO HIM FAA OBSERVATIONS ON HIS COMMENTS WE WOULD BE GLAD TO DO SO. HOWEVER, HE WAS SPEAKING TO US ON OFF THE RECORD BASIS AND IT WOULD BE EMBARRASSING TO HIM AMFIUS IF FAA WERE TO ADDRESS QUESTIONS OR COMMENTS DIRECTLY TO MOT.

6. WE WOULD BE GLAD ALSO TO KNOW IF FAA THINKS THERE IS ANYTHING MORE WE CAN DO TO HELP BRING ABOUT EARLY CONCLUSION OF AGREEMENT. WE SEE FAA EXERCISE AS IMPORTANT NEW TIE IN US-NIGERIAN RELATIONS BUT IF AGREEMENT NOT CONCLUDED SOON IT MAY BE OVERTAKEN BY FAST MOVING NIGERIAN EVENTS.
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